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Jul 11 2025

S.C. SUPREME COURT

STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT

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Certiorari to Lexington County

Honorable Perry H. Gravely, Circuit Court Judge

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KASHAWN A. SHELL,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2024-001887

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JOHNSON PETITION FOR WRIT OF CERTIORARI

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**INDEX**

INDEX ..... i

ISSUE PRESENTED ..... 1

STATEMENT OF THE CASE ..... 2

ARGUMENT

Petitioner’s guilty plea was not knowingly, intelligently, and voluntarily made where he only pled guilty due to trial counsel’s promise that he would be sentenced to ten years imprisonment if he pled guilty instead of proceeding to trial and where Petitioner was actually sentenced to eighteen years. .... 6

CONCLUSION ..... 9

PETITION TO BE RELIEVED AS COUNSEL ..... 10

## **ISSUE PRESENTED**

Whether Petitioner's guilty plea was knowingly, intelligently, and voluntarily made where he only pled guilty due to trial counsel's promise that he would be sentenced to ten years imprisonment if he pled guilty instead of proceeding to trial and where Petitioner was actually sentenced to eighteen years?

## STATEMENT OF THE CASE

Petitioner was arrested on December 11, 2017, following an investigation into a sexual assault and armed robbery at a hotel in West Columbia and a subsequent sexual assault and armed robbery at a hotel in Columbia. The two incidents occurred within hours of each other on December 6, 2017. App. 10, l. 13 – 14, l. 3.

A Lexington County grand jury indicted Petitioner on July 9, 2018, for armed robbery and first degree criminal sexual conduct. On November 20, 2019, Petitioner appeared before the Honorable Frank Addy and pled guilty to the lesser included offenses of attempted armed robbery and second degree criminal sexual conduct. Petitioner also waived venue and presentment to the grand jury and pled guilty to armed robbery and first degree criminal sexual conduct for the offense in Richland County. In exchange for his plea, the state dismissed Lexington County charges for kidnapping, criminal conspiracy, and possession of a weapon during the commission of a violent crime, and Richland County charges for kidnapping, first degree burglary, first degree assault and battery, and possession of a weapon during the commission of a violent crime. The state also recommended Petitioner's sentences for the Lexington and Richland offenses be served concurrently. App. 3, l. 2 – 5, l. 22.

Jason Chehoski represented Petitioner on the Lexington County charges and Aimee Zmroczek represented Petitioner on the Richland County charges. Assistant Solicitor Rhonda Patterson was the prosecutor for Lexington County and Assistant Solicitor Bethany Miles was the prosecutor for Richland County. App. 1.

Trial counsel informed the judge prior to the plea that Petitioner was evaluated by the Department of Mental Health and, while he was found competent to stand trial, Petitioner was diagnosed with an intellectual disability. Petitioner's IQ is 48 and he attended special education

classes as a child. Petitioner also has a long history of mental illness. At the time of the plea, Petitioner was taking two prescription medications: Haldol “for the voices” he “sometimes” heard and Zyprexa, “a mood stabilizer.” App. 5, l. 24 – 6, l. 9; App. 8, l. 21 – 9, l. 15; App. 22, ll. 12-18; App. 25, ll. 7-14; App. 38, l. 15 – 39, l. 1; App. 145-155.

Judge Addy sentenced Petitioner to eighteen years for each offense and ordered the sentences be served concurrently. App. 39, l. 23 – 40, l. 2.

Petitioner attempted to appeal his convictions and sentence. However, the appeals were dismissed for failure to provide a sufficient explanation as required by Rule 203(d)(1)(B)(iv), SCACR. App. 42-57.

On November 20, 2020, Petitioner filed an application for post-conviction relief (PCR). App. 58-64. The state filed a return to this application dated June 14, 2021. App. 65-85. With the assistance of counsel, Petitioner filed an amended application on September 29, 2022, raising the claim argued in this petition. App. 86-88. An evidentiary hearing was convened on December 18, 2023, before the Honorable Perry H. Gravely. App. 89. Deputy Attorney General Donald Zelenka represented the state. Ola Johnson represented Petitioner. App. 90.

Petitioner testified at the evidentiary hearing that trial counsel told him if he pled guilty, he would be sentenced to ten years imprisonment. He explained that he met with counsel Chehoski and Zmroczek together before he accepted the state’s offer and they told him to “sign the paper” stating he agreed to plead guilty in exchange for a ten year sentence. “So I [Petitioner] did that.” Petitioner maintained that when the trial judge asked him during the plea proceeding if he had been promised anything in exchange for his plea, he said no because he “forgot all about the little ten years that [he] signed.” App. 96, l. 1 – 97, l. 9.

Lashonda Shell, Petitioner's mother, corroborated Petitioner's testimony. She explained that trial counsel told her before Petitioner pled guilty that Petitioner would be sentenced to "about ten years." App. 105, ll. 14-15. According to Shell, both Chehoski and Zmroczek told her Petitioner was "looking at . . . between five to ten years." App. 115, ll. 8-21. While Shell never saw anything in writing reflecting the potential sentence, she trusted Petitioner's attorneys who verbally told her the maximum sentence Petitioner would receive was ten years. App. 116, ll. 6-13.

Aimee Zmroczek, Petitioner's trial counsel on his Richland County charges, testified that the state never offered to recommend a sentence of ten years imprisonment. Rather, ten years was the mandatory minimum sentence Petitioner was facing if he pled guilty to armed robbery. App. 122, ll. 13-20. Zmroczek said she told Petitioner and his mother that she would ask the trial judge to sentence Petitioner to ten years, but she did not promise Petitioner he would actually receive ten years. App. 124, l. 24 – 125, l. 5. Despite Petitioner's intellectual disability, Zmroczek maintained that "there was never any confusion" and that Petitioner understood "the hope and desire" was that Petitioner would be sentenced to ten years, but there was no "guarantee." App. 128, ll. 2-13.

Jason Chehoski, Petitioner's trial counsel for his Lexington County charges, testified that he did not tell Petitioner he would be sentenced to ten years if he pled guilty. Chehoski said he told Petitioner that he expected Petitioner would receive "somewhere between" ten and fifteen years. However, Chehoski testified that "it was certainly not a promise." He explained that the plea was a "global resolution" of all of Petitioner's charges in Lexington and Richland County and "that ten years [imprisonment] was going to be the floor" because the mandatory minimum sentence for armed robbery is ten years. Chehoski maintained that Petitioner understood he was

facing a wide sentencing range of ten to thirty years imprisonment, which was “directly communicated to him by both myself [Chehoski] and Ms. Zmroczek.” Chehoski also told Petitioner’s mother, Lashonda Shell, the sentencing range Petitioner faced. Despite the wide range, Chehoski told Petitioner “we’re going to be asking for” ten years, the mandatory minimum. App. 136, l. 1 – 137, l. 9.

The PCR court denied Petitioner relief. App. 156-186. The court found Petitioner failed to show that trial counsel advised Petitioner that he would receive a ten year sentence. App. 178. The court emphasized that “during the plea proceeding, there was no reference that this was an agreed sentence of 10 years by any party.” App. 178. The court further found Petitioner’s assertion that counsel promised him he would be sentenced to ten years if he pled guilty was not credible. App. 180. Instead, the court determined Petitioner was correctly advised that he was facing a mandatory minimum of ten years imprisonment and up to twenty years on his Lexington County charges and up to thirty years on his Richland County charges. App. 180.

Because Petitioner’s guilty plea was not knowingly, intelligently, and voluntarily made due to trial counsel’s deficient performance, this petition for writ of certiorari follows.

## ARGUMENT

Petitioner's guilty plea was not knowingly, intelligently, and voluntarily made where he only pled guilty due to trial counsel's promise that he would be sentenced to ten years imprisonment if he pled guilty instead of proceeding to trial and where Petitioner was actually sentenced to eighteen years.

Petitioner's guilty plea was not knowingly, intelligently, and voluntarily made due to the improper influence of plea counsel's promise that the judge would sentence Petitioner to ten years imprisonment if he pled guilty. Petitioner was prejudiced by trial counsel's influence because, as Petitioner's testimony indicated, he would not have pled guilty but for plea counsel's promise that he would be sentenced to three and a half years imprisonment.

The difference "between a valid guilty plea and an invalid guilty plea lies in the knowing and voluntary nature of the plea." Berry v. State, 381 S.C. 630, 635, 675 S.E.2d 425, 427 (2009). "The longstanding test for determining the validity of a plea is whether the plea represents a voluntary and intelligent choice among the alternative courses of action open to the defendant." Hill v. Lockhart, 474 U.S. 52, 56 (1985) (internal quotations omitted) (applying the two part test for claims of ineffective assistance of counsel in Strickland v. Washington, 466 U.S. 668 (1984), to claims of the same against plea counsel).

First, "the voluntariness of the plea depends on whether counsel's advice was within the range of competence demanded of attorneys in criminal cases." Id. On the other hand, the prejudice requirement focuses on whether "there is a reasonable probability that, but for counsel's errors, [the defendant] would not have pleaded guilty and would have insisted on going to trial." Id. at 59. "The voluntariness of a guilty plea is not determined by an examination of a specific inquiry made by the sentencing judge alone, but is determined from both the record made at the time of the

entry of the guilty plea, and also from the record of the PCR hearing.” Holden v. State, 393 S.C. 565, 572-574, 713 S.E.2d 611, 615 (2011) (citing Roddy v. State, 339 S.C. 29, 33, 528 S.E.2d 418, 420 (2000)).

“The right to counsel plays a crucial role in the adversarial system embodied in the Sixth Amendment, since access to counsel’s skill and knowledge is necessary to accord defendants the ‘ample opportunity to meet the case of the prosecution’ to which they are entitled.” Strickland, 466 U.S. at 685 (quoting Adams v. United States ex. rel. McCann, 317 U.S. 269, 275-276 (1942)). Additionally, a guilty plea that was “entered by one fully aware of the direct consequences . . . must stand *unless* induced by . . . misrepresentation (including unfulfilled or unfulfillable promises) . . . ” Brady v. United States, 397 U.S. 742, 755 (1970) (emphasis added) (quoting Shelton v. United States, 246 F.2d 571, 572 n.2 (5th Cir. 1957) (reversed on other grounds, 356 U.S. 26 (1958)). Accordingly, counsel provides ineffective assistance in the adversarial system when he induces the defendant to plead guilty.

In this case, Petitioner was induced into pleading guilty by plea counsel’s promise to Petitioner that he would be sentenced to ten imprisonment if he accepted the state’s offer and pled guilty. Petitioner’s testimony was corroborated by his mother, Lashonda Shell, who likewise maintained that counsel told her Petitioner would be sentenced somewhere in the range of five to ten years. Counsel assurances prevented Petitioner’s guilty plea from being knowingly and voluntarily made and, consequently, rendered it invalid. See Berry, 381 S.C. at 635, 675 S.E.2d at 427. A plea is not voluntary when it is induced by misrepresentation including unfulfilled promises. See Brady, 397 U.S. at 755. A reasonably competent criminal defense attorney would not have promised Petitioner that he would be sentenced to ten years, which was the mandatory minimum

Petitioner was facing, when there was no sentence recommendation from the state and when it was not a negotiated plea.

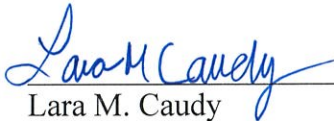
Additionally, there is a reasonable probability that but for plea counsel's promise, Petitioner would not have pled guilty and would have insisted on proceeding to trial. Thus, Petitioner was prejudiced by plea counsel's promise. Lockhart, 474 U.S. at 59. It was *only* because of this promise that Petitioner decided to plead guilty.

As a result of the invalid plea and the resulting prejudice, Petitioner's convictions should be reversed and he should be granted a new trial.

**CONCLUSION**

Based on the foregoing argument, Petitioner respectfully requests this Court grant the petition for writ of certiorari and permit full briefing on the issue presented. Petitioner ultimately requests this Court reverse his convictions and sentence and remand for a new trial.

Respectfully submitted,

  
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Lara M. Caudy  
Senior Appellate Defender

ATTORNEY FOR PETITIONER

This 11th day of July, 2025.

Jul 11 2025

S.C. SUPREME COURT

STATE OF SOUTH CAROLINA

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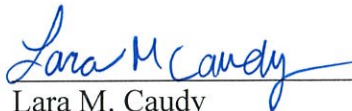
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PETITION TO BE RELIEVED AS COUNSEL  
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Counsel for Kashawn A. Shell states:

1. She is an appellate defender for the South Carolina Office of Appellate Defense, and was appointed to represent Petitioner.
2. She has reviewed the record of Petitioner’s post-conviction relief hearing, which was held on December 18, 2023 before the Honorable Perry H. Gravely, and, in her opinion, the appeal is without legal merit sufficient to warrant a new trial.
3. She has, pursuant to Johnson v. State, 294 S.C. 310, 364 S.E.2d 201 (1988), briefed an arguable legal issue which arose during the post-conviction relief process.

Therefore, counsel requests that the Court relieve her as counsel for Kashawn A. Shell.

Respectfully Submitted,

  
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Lara M. Caudy  
Senior Appellate Defender

ATTORNEY FOR PETITIONER

This 11th day of July, 2025.

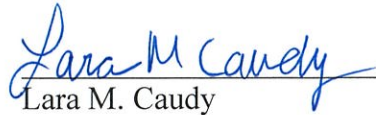
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CERTIFICATE OF COUNSEL

The undersigned certifies that to the best of her ability this Johnson Petition for Writ of Certiorari complies with Rule 211(b), SCACR, and the April 15, 2014 order from the South Carolina Supreme Court entitled “Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings.”



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This 11th day of July, 2025.